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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-484

INDEPENDENT SOAP AND CHEMICAL WORKERS OF KANSAS CITY, KANSAS,
Petitioner,

vs.

FLORENCE N. CUNNINGHAM, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion and the journal entry of the District Court for the 29th Judicial District of Kansas are unreported but are found on pages 29 and 32 of the Appendix. The opinion of the Supreme Court of Kansas is also unreported but is found at page 1 of the Appendix.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTION PRESENTED

Whether, under Kansas law, in the absence of provisions providing for expulsion or any other discipline, a Union may expel members for activity not proscribed in the Union Constitution and Bylaws.

STATEMENT OF THE CASE

The facts set out in the petition are essentially accurate. However, Respondents must add that not only do the Union's Constitution and Bylaws contain no provision authorizing expulsion or other disciplinary proceedings but, furthermore, contain no disciplinary rules of any kind other than those relating to nonpayment of dues. (A. 43)

Respondents' contention with respect to the effect of the collective bargaining agreement between the Union and the employer is also slightly misstated. That agreement contains a provision setting out the positive provisions for continued union membership and under what circumstances an employee may remain a Union member. It contains no provision attempting to keep the Union "from expelling strike breakers." (Petition 3) (A. 44)

ARGUMENT

Respondents contend that the Court should not grant the writ of certiorari in this case because (1) the decision of the Supreme Court of Kansas was correct, (2) the decision below creates no conflict with decisions of other state courts or courts of the federal system, and (3) the case involves no important issue of federal law which should be determined by the Supreme Court.

This case involves a determination of the rights of Respondents, Union members, with respect to their membership in Petitioner Union. The relationship between Union members and their Union is set out in the Constitution and Bylaws of the Union which, to the extent relevant, are set out in the Appendix. (A. 43) The relationship between a Union and its members is contractual in nature and that contract is embodied in the Constitution and Bylaws of the Union. *Machinists Lodge 405*, 185 NLRB No. 23, 75 LRRM 1004 (1970); *Local 248, etc.* v. *Wisconsin Employment Relations Board*, 11 Wis. 2d 277, 105 N.W.2d 271 (1960); *International Association of Machinists* v. *Gonzales*, 356 U.S. 617, 78 S. Ct. 923 (1958); *Radio Station KFH Co.* v. *Musicians' Association*, 169 Kan. 596, 220 P.2d 199 (1950).

The contract between the Union and its members in this case gives the Union no power to expel or otherwise discipline its members except in the case of nonpayment of dues which is provided for in the Constitution. (A. 44) The Kansas Supreme Court properly found that to sustain the Union position would require first the finding of some implied rule which Respondents had violated and then the finding of an implied power to punish for violation of this implied rule. (A. 12) As the Court said "The Constitution and Bylaws of the Union contain no prohibition against crossing a picket line and, more significant and determinative in this case, contain no authorization for the Union to expel members for any reason." (A. 12) Sound contract interpretation requires this result.

The Kansas Court found that the absence of any provision for disciplinary proceedings in the Union's Constitution was explained by other evidence. The contract between the company and the union negotiated by the

Union on behalf of its members set out an unusual provision containing requirements for membership in the Union: (1) the signing of an authorization card and (2) payment of dues. As long as a member fulfills these two requirements (and there is no contention that Respondents herein did otherwise) he may continue his membership at his discretion. (A. 44) The Court found that such language "rejects any implied authority of the Union to impose other requirements on membership." (A. 13) This language buttressed the Respondents' argument that no authority should be implied.

The petition inaccurately contends that the decision of the Kansas Supreme Court is in conflict with decision of this Court and other state supreme courts. The Courts are unanimous in the position that the relationship of a Union member to his Union is contractual in nature and that the contract is embodied in the Constitution and other rules of the Union, *Machinists Lodge 405, supra, Local 248, etc.* v. *Wisconsin Employment Relations Board, supra,* and, while this Court has not been called upon to specifically adopt such a position, it has recognized and approved it. *International Association of Machinists* v. *Gonzales, supra,* at 618-619.

Petitioner relies heavily upon this Court's decision in *International Brotherhood of Boilermakers, etc.* v. *Hardeman,* ..... U.S. ....., 91 S. Ct. 609 (1971) but in that case this Court specifically said that state law may, in many circumstances, go farther than federal law (..... U.S. ....., 91 S. Ct. at 616, footnote 11). This Court there pointed out that the Labor Management Reporting Disclosure Act (29 USC 413), specifically preserves state law remedies in this area (..... U.S. ....., 91 S. Ct. at 616). A statement of this Court in the *Gonzales* case is particularly applicable to the instant case:

> But the protection of Union members in their rights as members from arbitrary conduct by Unions and Union officers has not been undertaken by federal law, and indeed the assertion of any such power has been expressly denied. . . . The present controversy is precisely one that gives legal efficacy under *state law* to the rules prescribed by a labor organization for "retention of membership therein." Thus, to preclude a state court from exerting its traditional jurisdiction to determine and enforce the rights of Union membership would in many cases leave an unjustly ousted member without remedy for the restoration of his important Union rights. (emphasis supplied) 356 U.S. at 620, 78 S. Ct. at 925.

Petitioner's reliance upon the *Hardeman* case is entirely misplaced. This situation is utterly unlike that case. There the expelled Union member was charged with violation of specific articles of the Union Constitution and the district court attempted to substitute its interpretation of what was contemplated by the Union Constitution for the Union's own interpretation. That, this Court said, it could not do. However, the instant situation is entirely different. In *Hardeman,* there were rules and regulations which were reasonably applied. Here, on the other hand, there are no rules and regulations and the Union, in order to sustain its course of conduct, must be found to have the power to create offenses out of whole cloth and then, out of similar cloth, create disciplinary proceedings to redress these offenses. Neither this Court nor any other court has even attributed such authority to a Union.

Unlike unfair labor practice assertions under Section 8 (b) of the National Labor Relations Act (29 USC 159), the subject matter of the instant proceeding is in no way preempted by federal law. There is no question that Unions have, under Section 8(b)(1) of that Act, the

power to prescribe rules and regulations for retention of Union membership. But the Union chose not to do so and that is crucial here. None of the rules agreed upon by the members of the Union prohibit crossing a picket line. Moreover, the members did not by their contract of self-organization give the Union authority to expel or take other disciplinary action. Such contractual authority cannot be implied.

Finally, it must be pointed out that there is no important federal issue presented in this case which would merit a hearing by this Court. The facts of the case are rare, if not unique. We do not have presented a question of whether a Union has the right, under Kansas or federal law, to enact rules giving the "power to fine or suspend members." (Petition 7). Clearly, under both Kansas and federal law, a Union may formulate reasonable rules and regulations regarding membership. Here we are concerned only with a case where the Union did not adopt such power and did not provide for its exercise. But the failure of a given labor organization to adopt disciplinary rules and the means of enforcing them in no way affects the power to do so which has been exercised lawfully by many other Unions. Petitioner's remedy lies not with this Court. If the members of the Union desire to have the powers described here, the Constitution and Bylaws can be so written. Petitioner would lead the Court to believe that the decision of the Kansas Supreme Court improperly restricts the internal functioning of a Union. This is simply not the case. The statutes and the decisions of various courts clearly point out what Unions can do and the decision of the Supreme Court of Kansas in no way interferes with those Union rights.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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